

RECORDATION NO. 21738-M FILED

NOV 15 '10 -11 55 AM

**SURFACE TRANSPORTATION BOARD**

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November 15, 2010

Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

Dear Section Chief,

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of an Assignment and Assumption Agreement, dated as of November 15, 2010, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Memorandum of Railcar Lease and related documents previously filed with the Board under Recordation Number 21738-B.

The names and addresses of the parties to the enclosed document are:

Security Trustee/  
Foreclosing Lender/  
Lessor. Wells Fargo Bank Northwest, N.A.  
299 South Main Street  
Salt Lake City, UT 84111

Buyer: GATX Corporation  
Suite 2200  
Four Embarcadero Center  
San Francisco, CA 94111]

Chief  
Section of Administration  
15 November, 2010  
Page 2

A description of the railroad equipment covered by the enclosed document is:

237 railcars NS 472000 – NS 472239 (not including NS 472030, NS 472033 and NS 472201)

A short summary of the document to appear in the index is:

Assignment and Assumption Agreement

Also enclosed is a check in the amount of \$41.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Alvord', with a long horizontal stroke extending to the right.

Robert W. Alvord

RWA/sem  
Enclosures

NOV 15 '10 -11 55 AM

**ASSIGNMENT AND ASSUMPTION AGREEMENT****SURFACE TRANSPORTATION BOARD**

This Assignment and Assumption Agreement dated as of November 15, 2010 (this "Agreement"), is between (a) **WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION**, located at 299 South main Street, 12th Floor, Salt Lake City, Utah 84111, as security trustee (the "Security Trustee") under that certain Security Agreement, dated as of December 22, 2006 (as amended, supplemented and modified from time to time, the "Security Agreement"), among the Security Trustee, **BBRX Three LLC**, located at 600 Lexington Avenue, 19th Floor, New York, New York 10022, as borrower (the "Original Borrower"), **Hypo Public Finance USA, LLC** (as successor to Hypo Public Finance, Inc.), as senior lender (in such capacity as senior lender, the "Original Senior Lender") and **Hypo Public Finance USA, LLC** (as successor to Hypo Public Finance, Inc.), as agent for the Original Senior Lender (the "Original Senior Agent"), and which Security Trustee is hereby acting as the foreclosing secured party and, in such capacity as foreclosing lender, is acting for and on behalf of the Original Borrower, as lessor (in such capacity, the "Lessor") and (b) **GATX CORPORATION**, a New York corporation, located at 222 West Adams Street, Chicago, Illinois 60606 (the "Buyer"). Capitalized terms used herein without definition shall have the meanings ascribed thereto in the Purchase Agreement (defined below), which also contains rules of usage that apply to terms defined therein and herein.

**RECITALS:**

A. WHEREAS, the Security Trustee is the security trustee under the Security Agreement, which secures the obligations owed to the Agent and the Lenders under that certain Senior Loan Agreement, dated as of December 22, 2006 (as amended, supplemented and modified from time to time, the "Loan Agreement"), among Original Borrower, as borrower, the Original Senior Lender, as lenders, and the Original Senior Agent.

B. WHEREAS, the (i) the Original Borrower has defaulted on its obligations secured by the Railcar Collateral Assets, (ii) Seller has exercised its post default remedies with respect to the Railcar Collateral Assets and has agreed to sell to the Buyer the Railcar Collateral Assets pursuant to a private foreclosure sale (the "Foreclosure", and Buyer's acquisition of the Railcar Collateral Assets through the Foreclosure, the "Foreclosure Acquisition") conducted in accordance with Sections 9-610 and 9-613 of the Uniform Commercial Code in effect in the State of New York (the "U.C.C.") and (iii) by reason of such sale by Seller to Buyer, Buyer will acquire the rights of the Original Borrower in and to the Railcar Collateral Assets free and clear of all interests of the Original Senior Lender and all interests subordinated to the interests of the Seller (including those held by the Original Borrower) pursuant to U.C.C. § 9-617. This Assignment and Assumption Agreement constitutes a transfer statement within the meaning of U.C.C. § 9-619.

C. WHEREAS, the Buyer is acquiring the Railcar Collateral Assets at the Foreclosure for a cash payment of US\$73,500,000 in accordance with the terms of a Purchase Agreement, dated as of November 11, 2010 (the "Purchase Agreement") between the Seller and the Buyer.

D. WHEREAS, the Purchase Agreement contemplates the execution and delivery of this Agreement by the Security Trustee, acting as foreclosing lender and lessor, and the Buyer.

E. WHEREAS, through this Agreement and in accordance with the terms hereof, Seller, as the Security Trustee, in its capacity as the foreclosing secured party and Lessor, desires to effect the sale of the Railcar Collateral Assets to the Buyer through the Foreclosure, and the Buyer desires to acquire from the Seller, as the foreclosing lender, all of the Original Borrower's rights, title and interest in and to the Railcar Collateral Assets, and, in conjunction therewith, the Buyer desires to assume all of the Original Borrower's right, title and interest and obligations under the Leases, all upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows.

1. Assignment. Effective as to each item of Equipment from and after the date hereof, the Lessor hereby assigns, transfers and conveys to the Buyer all of the Lessor's respective rights, title and interest, in and to such item of Equipment listed on Exhibit A hereto and assigns to the Buyer all of the Lessor's rights and obligations, under each of the Leases listed on Exhibit A hereto (collectively, the "Assigned Operative Agreements").

Notwithstanding the foregoing, each of the Lessor and the Buyer shall continue to be entitled to the benefit of any applicable rights to indemnification for tax and other matters which arose or may arise from or be related to any event or circumstance occurring or in existence prior to the date hereof, as specified in the Purchase Agreement.

2. Acceptance of Assignment; Effect of Assignment. The Buyer accepts the assignment contained in Section 1 and agrees to be bound to the same extent as the Original Borrower by all the terms of the Assigned Operative Agreements. Effective on and after the date hereof, after giving effect to the transaction described herein, the Buyer shall be deemed to stand in the place of the Original Borrower for all purposes under the applicable Assigned Operative Agreements and each reference in the Assigned Operative Agreements to the Original Borrower shall be deemed to mean the Buyer from and after the date hereof.

3. Amendments. No provision of this Agreement may be amended, modified or waived except by written agreement duly executed by each of the parties hereto.

4. Notices. All notices, requests or other communications to or upon any party hereto in connection herewith shall be given in the manner prescribed by Section 9.5 of the Purchase Agreement.

5. Headings. The section headings used in this Agreement are for convenience of reference only and shall not be used or construed to define, interpret, expand or limit any provision hereof.

6. Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

7. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the conflict of law rules thereof, other than Section 5-1401 of the New York General Obligations Law.

8. Recordation. The Buyer and the Lessor agree to record this Agreement with the Surface Transportation Board and with the Registrar General of Canada, if applicable, to evidence the assignment by the Lessor to the Buyer of the Lessor's rights under the Lease, if and only if the Lease has been recorded with the Surface Transportation Board and/or the Registrar General of Canada, as the case may be.

9. Further Assurances. Each of the parties hereto covenants and agrees that, at any time and from time to time after the date hereof, at the request and expense of the requesting party hereto, it will promptly and duly execute and deliver, or cause to be executed and delivered, to the requesting party all such further instruments and take all such further action as may be reasonably requested by such party to more effectively sell, transfer, assign, and convey each item of Equipment.

10. Binding Agreement. This Agreement shall be binding upon the Lessor and the Buyer, their respective successors and permitted assigns, for the use and purposes set forth and referred to herein, effective as of the date hereof.

[Remainder of page intentionally left blank]

[Assignment and Assumption Agreement]

IN WITNESS WHEREOF, this Assignment and Assumption Agreement has been duly executed by the parties hereto as of the date first above written.

**WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION**

as security trustee, as foreclosing lender acting  
in such capacity for and on behalf of Original  
Borrower, as lessor

By: 

Name: G. Brad Martin

Title: Asst. Vice President

**GATX CORPORATION,**  
as Buyer

By: \_\_\_\_\_

Name:

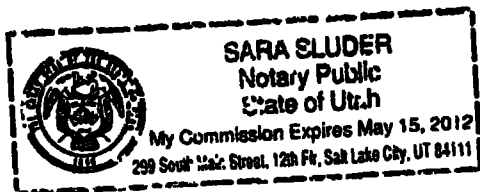
Title:

[Assignment and Assumption Agreement]

State of Utah )  
 )  
County of Salt Lake )

On this, the 9th day of November, 2010, before me, a Notary Public in and for said County and State, personally appeared G. Brad Martin, who acknowledged himself/herself to be a duly authorized person of **WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION**, as security trustee, as foreclosing lender acting for and on behalf of Original Borrower, as lessor, and that, as such duly authorized person, he/she executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.



Name: Sara Sluder  
Notary Public Sara Sluder

My Commission Expires: MAY 15, 2012

Residing in: Utah

State of \_\_\_\_\_ )  
 )  
County of \_\_\_\_\_ )

On this, the \_\_\_\_\_ day of [\_\_\_\_], 2010, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of [\_\_\_\_], who acknowledged himself/herself to be a duly authorized officer of [\_\_\_\_], and that, as such officer, being authorized to do so, he/she executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

Name: \_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Residing in: \_\_\_\_\_


[Assignment and Assumption Agreement]

**IN WITNESS WHEREOF**, this Assignment and Assumption Agreement has been duly executed by the parties hereto as of the date first above written.

**WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION**  
as security trustee, as foreclosing lender acting  
in such capacity for and on behalf of Original  
Borrower, as lessor

By: \_\_\_\_\_  
Name:  
Title:

**GATX CORPORATION,**  
as Buyer

By:  \_\_\_\_\_  
Name: *Cliff Forzenheim*  
Title: *SVP, Strategic Growth*



[Assignment and Assumption Agreement]

State of \_\_\_\_\_ )  
 )  
County of \_\_\_\_\_ )

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be a duly authorized person of **WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION**, as security trustee, as foreclosing lender acting for and on behalf of Original Borrower, as lessor, and that, as such duly authorized person, he/she executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

Name: \_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Residing in: \_\_\_\_\_

State of ILLINOIS )  
 )  
County of COOK )

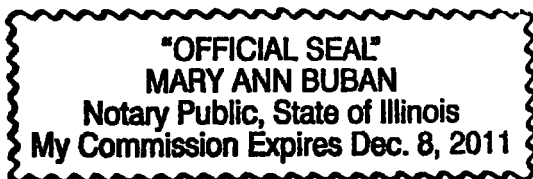
On this, the 11TH day of NOV, 2010, before me, a Notary Public in and for said ~~County~~ and State, personally appeared CLIFFORD J. PORZENHEIM the SR. VICE PRESIDENT of STRATEGIC GROWTH, who acknowledged himself/herself to be a duly authorized officer of GATX CORPORATION, and that, as such officer, being authorized to do so, he/she executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

Name: Mary Ann Buban  
Notary Public

My Commission Expires: 12/08/2011

Residing in: ILLINOIS



## **Exhibit A**

## EQUIPMENT, LEASES & STORAGE AGREEMENTS

Lease #	Lessee/Storage	Type	# of Units	Year Built/ Manufacturer	Description	Reporting Marks	Casualty Marks
1	Coleto Creek Power, LP	Net	125	2005 by FreightCar America, Inc.	4520 CF Aluminum body rotary dump BethGon II coal porter railcars, 286,000 GRL, AAR car type code J311	CCTX 7001-7125, inclusive	None
2	Tennessee Valley Authority	Net	123	2005 by FreightCar America, Inc.	4200 CF Aluminum body Rotary AutoFlood III open top coal hopper railcars, 286,000 GRL; AAR car type code K341	TVAX 25377, 25390, 25477, 25478, 25491, 25492, 25503, and 25507-25624, inclusive	TVAX 25525 and 25596
3	Norfolk Southern Railway Company	Net	237	2003 by National Steel Car Limited	60' Plate F cushioned boxcars with 12' plug doors, 286,000 GRL, AAR car type code B635	NS 472000-472239, inclusive	NS 472030, 472033, and 472201
4	Canadian National Railway Company	Net	100	2005 and 2006 by Trinity Rail Group, LLC	112-Ton, 42' continuous trough covered coil cars, 286,000 GRL, AAR car type code E241	AOK 34200-34299, inclusive	None

Lease #	Lessee/Storage	Type	# of Units	Year Built/ Manufacturer	Description	Reporting Marks	Casualty Marks
5	Consumers Energy Company	Full	292	2006 by FreightCar America, Inc.	4520 CF Aluminum Outside Stake BethGon II coal porter railcars, 286,000 GRL, AAR car type code J311	PSTX 2001-2014, inclusive; 2016 - 2030, inclusive; 2032 - 2053, inclusive; 2055-2066, inclusive; 2069-2079, inclusive; 2081-2094, inclusive; 2096-2100, inclusive; 2102-2103, inclusive; 2105-2115, inclusive; 2117-2119, inclusive; 2121-2289, inclusive; 2291; and 2295-2307, inclusive	PSTX 2015, 2031, 2054, 2067, 2068, 2080, 2095, 2101, 2104, 2116, 2120, 2290, 2292, 2293 and 2294
6	Lafarge North America, Inc. #1	Net	20	2006 by Trinity North American Freight Car, Inc.	3230 CF Pressure Differential covered hopper railcars, 286,000 GRL, AAR car type code C612	LAFX 060141-060160, inclusive	None
7	Lafarge North America, Inc. #2	Net	20	2006 by Trinity North American Freight Car, Inc.	3230 CF Pressure Differential covered hopper railcars, 286,000 GRL, AAR car type code C612	LAFX 060161-060180, inclusive	None

Lease #	Lessee/Storage	Type	# of Units	Year Built/ Manufacturer	Description	Reporting Marks	Casualty Marks
8	Arizona Electric Power Cooperative	Net	5	2006 by FreightCar America, Inc.	4200 CF Aluminum body AutoFlood III open top hopper railcars, 286,000 GRL, AAR car type code K341	BNBX 90006,90013, 90015, 90050, and 90079	None
9	Rail Connection, Inc.	Full	121	2006 by FreightCar America, Inc.	4200 CF Aluminum body AutoFlood III Open Top Hoppers. 286,000 lbs. GRL; AAR Car Type Code K341	BNBX 26001-26082, inclusive; 26084-26088, inclusive; 26090-26106, inclusive; 26108-26112, inclusive; and 26114-26125, inclusive	None
10	Soo Line Railroad Company	Full	115	2006 by Freightcar America, Inc.	4200 CF Aluminum body AutoFlood III Open Top Hoppers. 286,000 lbs. GRL; AAR Car Type Code K341	BNBX 90001-90005, inclusive; 90007-90012, inclusive; 90014; 90016; 90019-90040, inclusive; 90042-90049, inclusive; 90051-90053, inclusive; 90055-90078, inclusive; 90080-90102, inclusive; and 90104-90125, inclusive	None

Lease #	Lessee/Storage	Type	# of Units	Year Built/ Manufacturer	Description	Reporting Marks	Casualty Marks
11	Manufacturers Railway Company (Storage)	Storage	10	2006 by Trinity North American Freight Car, Inc.	3230 CF Pressure Differential covered hopper railcars, 286,000 GRL, AAR car type code C612	BNBX 60601-60610	None
12	Alabama and Gulf Coast Railway (Storage)	Storage	14	2005 by Freightcar America, Inc.	4520 CF Aluminum Outside Stake BethGon II coal porter railcars, 286,000 GRL, AAR car type code J311	BNBX 99424-99432, inclusive; and 99434-99438, inclusive	BNBX 99433
13	Dakota Northern RR (Storage)	Storage	5	2006 by Freightcar America, Inc.	4200 CF Aluminum body AutoFlood III Open Top Hoppers. 286,000 lbs. GRL; AAR Car Type Code K341	BNBX 90018, 90041, 90054, 90103 and 90017	None

## **LEASE SUMMARIES**

### **Lease No. 1 – Coletto Creek Power, LP**

Master Net Railcar Lease, dated as of December 14, 2005, between Babcock & Brown Rail Funding, LLC and Coletto Creek Power, LP.

Schedule No. 01 to Master Net Railcar Lease, dated as of December 14, 2005, between Babcock & Brown Rail Funding, LLC and Coletto Creek Power, LP.

### **Lease No. 2 – Tennessee Valley Authority**

Master Net Railcar Lease, dated as of August 10, 2005, between Babcock & Brown Rail Funding, LLC and Tennessee Valley Authority.

Schedule No. 05 to Master Net Railcar Lease, dated as of December 14, 2005, between Babcock & Brown Rail Funding, LLC and Tennessee Valley Authority.

Lease Extension Agreement No. 1 to Schedule No. 05 to Master Net Railcar Lease, dated as of August 5, 2008, effective as of December 29, 2008, between BBRX Three LLC and Tennessee Valley Authority.

### **Lease No. 3 – Norfolk Southern Railway Company**

Master Net Railcar Lease, dated as of October 8, 1998, between The CIT Group/Equipment Financing, Inc. and Norfolk Southern Railway Company.

Rider A to Master Net Railcar Lease, dated as of October 8, 1998, between The CIT Group/Equipment Financing, Inc. and Norfolk Southern Railway Company.

Schedule No. 10 to Master Net Railcar Lease, dated as of November 15, 2002, between The CIT Group/Equipment Financing, Inc. and Norfolk Southern Railway Company.

Assignment and Assumption Agreement, dated as of December 22, 2005, between The CIT Group/Equipment Financing, Inc. and Babcock and Brown Rail Funding LLC.

Assignment and Assumption Agreement, dated as of December 22, 2006, between Babcock and Brown Rail Funding LLC and BBRX Three LLC.

Lease Extension Agreement No. 01, dated as of March 28, 2008, effective date as of April 1, 2008, between BBRX Three LLC and Norfolk Southern Railway Company.

### **Lease No. 4 – Canadian National Railway Company**

Master Net Railcar Lease, dated as of August 15, 2005, between Babcock & Brown Rail Funding LLC and Canadian National Railway Company.

Schedule No. 02 to Master Net Railcar Lease, dated as of December 8, 2005, between Babcock & Brown Rail Funding LLC and Canadian National Railway Company.

Lease Extension Agreement no. 01, dated as of November 27, 2006, between Babcock & Brown Rail Funding LLC and Canadian National Railway Company.

Lease No. 5 – Consumers Energy Company

Railroad Equipment Lease, dated as of March 30, 2006, between Babcock & Brown Rail Funding LLC, and Consumers Energy Company.

Lease No. 6 – Lafarge North America, Inc. #1

Master Net Railcar Lease, dated as of March 29, 2006, between Babcock & Brown Rail Funding LLC and Lafarge North America, Inc.

Schedule No. 01 to Master Net Railcar Lease, dated as of March 29, 2006, between Babcock & Brown Rail Funding LLC and Lafarge North America, Inc.

Lease No. 7 – Lafarge North America, Inc. #2

Master Net Railcar Lease, dated as of March 29, 2006, between Babcock & Brown Rail Funding LLC and Lafarge North America, Inc.

Schedule No. 02 to Master Net Railcar Lease, dated as of May 24, 2006, between Babcock & Brown Rail Funding LLC and Lafarge North America, Inc.

Lease No. 8 – Arizona Electric Power Cooperative

Master Net Railcar Lease, dated as of March 15, 2006, between Babcock & Brown Rail Funding LLC and Arizona Electric Power Cooperative.

Schedule No. 01 to Master Net Railcar Lease, dated as of March 15, 2006, between Babcock & Brown Rail Funding LLC and Arizona Electric Power Cooperative.

Schedule No. 02 to Master Net Railcar Lease, dated as of November 23, 2009, between BBRX Three LLC and Arizona Electric Power Cooperative.

Lease No. 9 – Rail Connection, Inc.

Master Full Service Railcar Lease, dated as of September 2, 2010, between BBRX Three LLC and Rail Connection, Inc.

Schedule No. 1 to Master Full Service Railcar Lease, dated as of September 2, 2010, between BBRX Three LLC and Rail Connection, Inc.



**Schedule No. 2 to Master Full Service Railcar Lease, dated as of September 2, 2010, between BBRX Three LLC and Rail Connection, Inc.**

**Lease No. 10 Soo Line Railroad Company**

**Proposal Letter dated as of July 29, 2009, by Babcock and Brown Rail Management LLC to Canadian Pacific Railway.**

## **STORAGE AGREEMENTS**

### **Storage Agreement No. 11 Manufacturers Railway Company**

Manufacturers Railway Company Storage Track License Agreement, dated as of July 27, 2010, between BBRX Three LLC and Manufacturers Railway Company.

### **Storage Agreement No. 12 Alabama & Gulf Coast Railway**

Non-Hazardous Car Storage Agreement, dated as of June 30, 2009, between BBRX Three LLC and Alabama & Gulf Coast Railway.

### **Storage Agreement No. 13 Dakota Northern Railroad**

Railroad Storage Agreement, dated as of June 1, 2009, between Minnesota Northern Railroad Inc., Dakota Northern Railroad, St. Croix Valley Railroad and Babcock & Brown Rail Funding LLC.

CERTIFICATION

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: \_\_\_\_\_

11/15/10



\_\_\_\_\_  
Robert W. Alvord